IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.116 OF 2005

Shrirang B. Kachare & Anr. .. Appellants
(Org.Defd.Nos.3 & 4)

vs.

Bhiku S. Kachare & Ors .. Respondents
(Org.Pltf.Nos.2 to 4 & 6)

Shri K.B.Sonwalkar, Advocate for the Appellant.

CORAM : A.S.OKA, J.

DATED : 16th March, 2005.

P.C. :

1. Heard Shri Sonwalkar for the Appellants. The Appeal is preferred by the Original Defendants 3 and 4. The trial court passed the decree for partition holding that the Original Plaintiff, Original Defendant No.1, Original Defendant No.2 and Original Defendant No.6 have 1/4th share each in all suit properties except one property mentioned in the operative part of the decree. The decree passed by the trial court has been confirmed in appeal.

2. Shri Sonwalkar submitted that the Defendant No.5 Anusaya is the second wife of Defendant No.1 Soma. He submitted that admittedly there are issues born to Defendant no.5 Anusaya after her marriage with Defendant No.1 Soma. He submitted that the sons and daughters of Anusaya are not impleaded as parties and the suit is bad for non joinder of necessary parties. Anusaya has claimed that certain suit properties are her self acquired properties. For deciding the issue based on the said contention the presence of her sons and daughters is not at all necessary. Even if sons and daughters can claim share under Section 16 of the Hindu Marriage act, at the highest they can claim the share in the 1/4th share of their father Soma. Defendant No.1 Soma is very much alive. There is no substance in the said contention.

3. The second contention of Shri Sonwalkar is that certain properties were self acquired properties of Anusaya and the vendor who sold the properties to Anusaya was examined and his evidence is not considered by the Courts below.

4. The Appellate Court has considered the evidence and has noted that the Defendant No.5 Anusaya did not step into witness box. She examined her power of attorney holder who is not related to her. After considering the entire evidence on record and after noting that Defendant No.5 Anusaya is not examined and the person from whom she had borrowed the amount for purchasing the lands were not examined, the appellate court has recorded a finding of fact that Defendant No.5 Anusaya failed to prove that certain lands were her self acquired properties.

5. The findings of facts recorded by the courts below are based on consideration of documents and oral evidence on record and no interference is called for in the Second Appeal under Section 100 of the Code of Civil Procedure, 1908. Hence Second Appeal is dismissed with no orders as to costs.

(A.S.Oka,J.)